

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
Vonage Holding Corporation	)	WC Docket 03-211
Petition for Declaratory Ruling	)	

**COMMENTS OF THE WASHINGTON ENHANCED 911 PROGRAM**

The Washington Enhanced 911 Program hereby submits these comments on Vonage Holdings Corporation (“Vonage”)’s Petition for Declaratory Ruling in WC Docket 03-211.<sup>1</sup> The Washington Enhanced 911 Program opposes Vonage’s request that the Federal Communications Commission (“Commission”) find the Order of the Minnesota Public Utilities Commission (“MPUC”) requiring Vonage to comply with state laws<sup>2</sup> is preempted. Preemption of the MPUC’s Order effectively removes Vonage’s obligation to provide access to E911 services at the same level of quality provided by other telecommunications providers in the State of Minnesota, and Vonage’s obligation to remit fees for 911 service.

**Introduction**

The Washington Enhanced 911 Program is responsible for statewide implementation and operation of enhanced 911 (“E911”) services in Washington State through the disbursement of funds collected through a statewide excise tax levied on users of wireless and wireline telephone service. The Washington Enhanced 911 Program recommends the Commission: (1) order Vonage to remit 911 taxes and fees to local jurisdictions; (2) declare the voice service that Vonage is providing via Internet Protocol to be classified as

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<sup>1</sup> *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission (“Vonage Petition”),* WC Docket No. 03-211 (filed Sept. 22, 2003).

<sup>2</sup> *Complaint of Minnesota Department of Commerce Against Vonage Holding Corp Regarding Lack of Authority to Operate in Minnesota, Order Finding Jurisdiction and Requiring Compliance (“Minnesota Order”),* Docket No. P-6214/C-03-108, September 11, 2003.

a telecommunications service; and (3) require Vonage and other VoIP companies provide users with the same or better access to 911 services as is available today from local exchange carriers.

### **Vonage is providing voice service in Washington**

According to their web site,<sup>3</sup> Vonage is a provider of voice communication services in Washington State. Under “features,” Vonage lists “Dialing 911” as a feature it provides.<sup>4</sup> On another web page, Vonage lists activation requirements that appear to be basic 911 service.<sup>5</sup> There is no indication on Vonage’s web site that their 911 service is enhanced. Thus, Vonage’s 911 service may not be as reliable as access to 911 from other providers. Carriers in Washington are required to provide enhanced 911 services. Enhanced 911 service is the anticipated standard as established by voter approval of Referendum 42 in 1991.

### **Vonage is avoiding paying 911 fees in Washington**

Vonage currently is not registered as a telecommunications company in Washington State and is not paying 911 excise taxes. Vonage says it wants to allow its users to have access to 911 services.<sup>6</sup> According to the Revised Code of Washington (“RCW”), customers of telecommunications service providers and radio communications service companies, or CMRS providers, are assessed a 911 tax. The RCW requires subscribers to wireline telecommunications service companies to pay 911 excise taxes at the county rate of up to \$.50 per switched access line per month, and at the state rate of \$.20 per switched access line per month.<sup>7</sup> Users of cellular telecommunications services are required to pay similar rates on each radio access line.<sup>8</sup> Vonage expects the public safety answering point (“PSAP”) to handle its customers’ emergency calls. By identifying Vonage as a telecommunications service provider its customers would be required to pay for support of 911 services in Washington.

### **Vonage should be required to pay 911 taxes and fees**

The Vonage 911 web page indicates “dialing 911 is free.” The Washington Department of Revenue is currently not receiving E911 taxes from Vonage or from its customers. Vonage boasts of having more than 50,000 customers nationwide.<sup>9</sup> Allowing Vonage to continue to avoid paying these fees means that emergency 911 centers throughout the United States are not being compensated for the critical assistance they are providing to Vonage customers.

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<sup>3</sup> Vonage Web site, ([http://www.vonage.com/area\\_codes.php](http://www.vonage.com/area_codes.php)).

<sup>4</sup> Id., Features, (<http://www.vonage.com/features.php>)

<sup>5</sup> Id., Features 911, ([http://www.vonage.com/features\\_911.php](http://www.vonage.com/features_911.php)).

<sup>6</sup> Vonage Petition at 8.

<sup>7</sup> Revised Code of Washington (“RCW”), Section 82.14B.030.

<sup>8</sup> Id.

<sup>9</sup> Vonage Digital News, September 23, 2003 (<http://www.vonage-news.com/>)

Vonage claims it is under “no obligation to provide its customers with access to the 911 services offered by telecommunications carriers.”<sup>10</sup> Vonage continues, by saying “in the interests of public safety”<sup>11</sup> it is pursuing methods to allow its customers to access emergency services by dialing 911. Vonage asserts that it cannot identify a customer’s location and therefore requires its customers to identify their location before they can commence using 911 service.<sup>12</sup> In the Minnesota Order the MPUC required Vonage to “remit 911 fees to the Department of Administration for the period when it served Minnesota customers but did not pay such fees.”<sup>13</sup> The Washington Enhanced 911 Program recommends the Commission require Vonage to pay 911 taxes and fees according to the amounts required of customers of local exchange carriers in the respective local jurisdictions.

### **Basic Telecommunications Service Requires Access to 911**

Access to 911 (or E911) is a basic service. The Commission defines access to emergency services as a service that is eligible for universal service support, i.e., a basic service.<sup>14</sup> The Washington Administrative Code (“WAC”) also defines basic service to mean “access to emergency services (E911).”<sup>15</sup>

Vonage and other VoIP providers have approached PSAP administrators in Washington and are requesting use of their 10-digit lines for emergency call completion. These requests appear to be similar to activity in Minnesota.<sup>16</sup> There is no guarantee that these lines will be answered when call volumes are high, and under other circumstances calls on these lines will be answered after 911 calls and the call management tools inherent in 911 systems will not be available. In centers that are not staffed 24/7, these calls may not be answered and when answered the equipment does not provide an enhanced connection (non delivery of location information). The 10-digit solution misleads customers into thinking that by dialing 911 they are actually receiving 911 services.

### **Vonage’s Service is a Telecommunications Service**

In its marketing efforts Vonage is attempting to demonstrate that its service is similar to phone services offered by local exchange carriers. As shown in the table below, Vonage offers numerous features including dialing of N11 numbers 411 and 911<sup>17</sup>.

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<sup>10</sup> *Vonage Petition* at 8.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Minnesota Order* at 9.

<sup>14</sup> 47 CFR §54.101 (a)(5).

<sup>15</sup> Washington Administrative Code (“WAC”), Section 480-120-021.

<sup>16</sup> See Affidavit of Jim Beutelspacher in MPUC Docket No. P-6214/C-03-108, at page 5, July 10, 2003.

<sup>17</sup> *Vonage Web site*, Features, ([http://www.vonage.com/features.php?refer\\_id=27400178](http://www.vonage.com/features.php?refer_id=27400178)).

TABLE 1: Vonage service features (copied from Vonage Web Site [**emphasis added**] ):

Advanced Services:	Great Benefits:	Phone Features:
<u>Adding additional lines to your account</u>	<u>Keep Your Existing Phone Number</u>	<u>Free 3 Way Calling</u>
<u>Free Area Code Selection</u>	<u>Great International Rates</u>	<u>Free Call Hunt</u>
<u>Free Telephone Number Portability</u>	<u>Free Calls to Any Other Vonage DigitalVoice Subscriber</u>	<u>Free Personalized Voicemail</u>
<u>Virtual Phone Number</u>	<b><u>Free Phone Adapter</u></b>	<u>Free Call Forwarding</u>
<u>Toll Free Plus</u>	<u>Money-Back Guarantee</u>	<u>Free Call Transfer</u>
<u>Fax Service</u>	<u>Refer-A-Friend Program</u>	<u>Free Call Waiting</u>
<b><u>Enhanced 411 Dialing</u></b>	<u>Free Live Customer and Technical Support Via Toll-Free Telephone and Online</u>	<u>Free Caller ID</u>
<u>Free Real Time Billing Information</u>		<u>Free Caller ID Block (*67)</u>
<u>Free Real Time Online Account Management</u>		<u>Free Repeat Dialing</u>
		<u>Free Call Return (*69)</u>
		<u>Free International Call Block</u>
		<b><u>Dialing 911</u></b>
		<u>Free Bandwidth Saver</u>

The inclusion of a “free phone adapter” permits customers to convert their analog phone signals to a digital format compatible with the customer’s broadband connection.<sup>18</sup> Vonage claims that there is some unique aspect to this signal conversion but virtually all calls made via the public switched telephone network require analog-to-digital conversions for compatibility with the digital switching systems. These conversions may take place anywhere in the PSTN, including at the customer’s premises or in the

<sup>18</sup> Vonage Web site, Vonage Phone Adapter, ([http://www.vonage.com/features\\_free\\_phone\\_adapter.php?refer\\_id=27400178](http://www.vonage.com/features_free_phone_adapter.php?refer_id=27400178)).

customer provided equipment (CPE). The free phone adapter is serving a similar function for a Vonage customer with multiple lines as is a digital PBX with analog extensions.

Vonage admits that its service meets two parts, parts (1) and (3), of the Commission's "four-part test for determining when IP telephony services should be classified as telecommunication services."<sup>19</sup> Part (2) of the Commission's four-part test states "the provider does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network."<sup>20</sup> Although the Vonage customer may use speakers and a microphone, or a headset, attached to the home computer, the customer is not required to use this additional equipment. The "free phone adapter" cited above permits the customer to continue using her current analog telephone for CPE. Therefore, Vonage satisfies part (2) of the Commission's four-part test.

Vonage also satisfies part (4) of the Commission's four-part test that "it transmits customer information without net change in form or content."<sup>21</sup> While both analog-to-digital conversion (in the PSTN) and protocol conversions (over the Internet) change waveforms and formats, all information is converted back to its original form, "without net change," at the other end of the connection. Vonage voice communications received at one end of the call are identical to what is spoken at the originating end of the Vonage connection. Therefore, Vonage satisfies all four parts of the Commission's four-part test for classifying IP telephony services as telecommunications services. The Washington Enhanced 911 Program recommends the Commission declare Vonage's voice communications service via use of the Internet Protocol a telecommunications service.

### **911 Community May Be at Risk without Funding Mechanism.**

If the Commission decides that Vonage is providing an information service, the 911 community may be at risk. VoIP is currently touted as a technology of the future for many telecommunications companies. Currently many long distance providers have adopted this technology to cut costs on high volume international and interstate calls. Migration of existing telecommunications customers to a VoIP platform from the traditional circuit switched network is a natural next step. The Commission must ask if the simple transition from one technology (circuit switched) to another (packet switched or VoIP) results in the reclassification of a service. The service itself is not changing. Only the technology that provides the service is changing. The Commission has always encouraged the use of more efficient and innovative technologies to improve the quality of services available to subscribers. This does not mean that technological improvement should result in service reclassification.

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<sup>19</sup> *Vonage Petition* at 16 and 17.

<sup>20</sup> *Federal-State Joint Board on Universal Service*, Report to Congress, CC Docket No. 96-45, released April 10, 1998 ("*Universal Service Report*") ¶ 88.

<sup>21</sup> *Id.*

The risk to the 911 community in the use of the VoIP technology is two fold. First, if the services used with VoIP are reclassified, the funding support mechanisms for 911 services could shrink dramatically or evaporate completely. The second challenge is that providers of this new technology need to work closely with the 911 community to develop solutions that provide location and caller identification that is equal to or better in quality to today's emergency services provided through the local exchange companies. The Commission has been instrumental in guiding the wireless providers through a process that guarantees continued high quality access to emergency services for users of cellular telephones. The Commission needs to continue this process for users of the VoIP technology. Therefore, the Washington Enhanced 911 Program recommends that the Commission set criteria and timelines for Vonage and other VoIP providers to follow that will provide users with the same or better access to 911 services that are available today from local exchange carriers.

## **Conclusion**

In conclusion, the Washington Enhanced 911 Program recommends that the Commission:

- 1) Order Vonage to pay 911 taxes and other fees that are used to support emergency services according to the amounts required of customers of local exchange carriers in the respective local jurisdictions;**
- 2) Declare the voice service that Vonage is providing via the use of Internet Protocol to be a telecommunications service; and**
- 3) Set criteria and timelines for Vonage and other VoIP providers to follow that will provide users with the same or better access to 911 services as is available today from local exchange carriers.**

Respectfully submitted this 24<sup>th</sup> day of October, 2003.

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